

## **ARTICLE 13**

### **LAYOFF AND RECALL PROCEDURE**

#### **Section A. Application of Layoff**

The Union recognizes the right of the Employer to lay off or to reduce the hours of employment, including the right to determine the extent and effective date of such reductions in accordance with the provisions of this Agreement.

Bumping, layoff and recall of Bargaining Unit employees shall be exclusively governed by and in accordance with the provisions of this Agreement and this Article. Layoff and recall shall be in accordance with procedures set forth in this Article with the exception they shall not apply to:

1. Temporary layoff of less than twenty (20) cumulative calendar days. In such cases, employees will be laid off by inverse seniority within classification and work location and recalled by seniority. Temporary layoff will only be used for:
  - a. Unanticipated loss of funding which the Department or Agency does not expect to obtain or make up within the temporary layoff period; or
  - b. Natural disaster, lack of utilities or civil disruption that makes premises at a work location inaccessible or unusable
2. Seasonal layoff of seasonal employees.
3. School year employees at institutions and schools, during recesses in the academic year and/or summer.

Temporary recall of seasonal or school year employees during their period of layoff under 2 and 3 above shall be by seniority.

The expiration of a limited term appointment shall not be considered a layoff for purposes of this Article. However, when a continuing employee with status gained from an indefinite appointment to a permanent position accepts a limited-term appointment under the same Appointing Authority, upon expiration of the limited-term appointment the employee will be returned to his/her former class, level, shift, and work location if there is a vacancy. If there is no vacancy, the employee shall exercise his/her bumping rights to the least senior position in his/her work location, beginning at the class/level which immediately preceded the limited-term appointment. Service earned in the limited-term position may be applied at the former level.

Upon expiration of the appointment of a continuing employee who accepts a limited-term appointment under a different Appointing Authority, the employee will be returned to his/her former class, level, and shift within the new Appointing Authority and new work location if there is a vacancy. If there is no vacancy, the employee will be placed on recall lists in accordance with Section G of this Article.

An employee who is recalled on a limited-term basis shall not be eligible to exercise employment preference at the expiration of the limited-term appointment, but shall be returned to all recall lists for which he/she is eligible except as referenced in Article 14 Section R.

In the Department of Education, employment opportunities utilized during the summer shall be offered by seniority to employees of the employing department (i.e., Blind Department or Deaf Department). Thereafter, any remaining employment opportunities shall be offered by seniority to employees of the other department prior to hiring new employees. School year employees (180 day employees) accepting such employment opportunities shall receive the employee's regular hourly rate with all benefits normally continued for employees on summer layoff. Other employees shall receive their regular hourly rate with normal benefits for their employment type.

When the Employer determines there is to be a layoff, employees who are scheduled to be laid off shall be given such written notice not less than fifteen (15) calendar days prior to the effective date of layoff. The Employer shall furnish the Local Union President concurrent written notice of the name, seniority, class titles, and current assignment location of employees scheduled to be laid off not less than fifteen (15) calendar days prior to the effective date of layoff. The Employer will, when layoffs are being planned, inform the Union, as soon as practical, which under normal circumstances is deemed to be not less than thirty (30) calendar days to discuss upon request the potential impact upon Unit employees caused by such layoff.

### **Section B. Reduction in Hours**

In the event that the Employer wishes to propose reduction in hours of employment, the parties will discuss such proposal and, upon mutual agreement only, such proposal may be implemented.

### **Section C. General Layoff Procedures.**

1. Layoff shall be by work location or Agency.

2. Within a work location or Agency, layoff shall be by Civil Service classification and level within a series; provided that preauthorized levels in a classification series shall be considered as one level as shown in Appendix C.
3. Employees within the affected work location or Agency shall be laid off in inverse seniority.

However, the Employer may lay off, bump, reassign or recall out-of-line seniority because of:

- a. Manual communication skill for the Department of Education. The Employer will not invoke this provision unless the performance standards have been outlined for the Union;
- b. Treatment team composition requiring a minority group individual for treatment methodology (for Department of Human Services only);
- c. Department of Civil Service approved selective certification, which may include selective certification by sex or manual communication skill;
- d. Maintaining an existing affirmative action plan in accordance with applicable law and approved in advance by the state personnel director.

The exceptions listed in a. through c. above shall only be made where there is a valid occupational requirement and no alternative exists for preferring the less senior employee. The Appointing Authority shall give the Local Union concurrent written notice when it requests approval from the Department of Civil Service for selective certification. Under no circumstances shall the exception listed in Subsection c. above form the basis for notice of layoff or recall out of line seniority until after the Local Union has been provided with a written copy of Civil Service approval for such selective certification.

In Subsection c. above, the Employer agrees that there will be no layoff (as defined in Article 22, Section Q.1.a.) out of line of seniority by sex during the life of this Agreement.

The Employer shall give notice in writing of intent to utilize Subsections a - c above to the Union and shall negotiate with the Union about the impact of such determination and/or discuss alternatives thereto. No Department shall implement Subsection d. above without the involvement and agreement of the State Employer. Such negotiation requirements shall not serve to delay the implementation of the Employer's determination.

The Appointing Authority shall give advance notice in writing of its intent to use such out-of-line seniority provision to enable the Union, upon request, to have sufficient time to discuss the impact of such determination.

4. During their terms in office, the Local Union President or Chapter Chairperson and the Chief Steward shall be considered more senior than other members of the Bargaining Unit in their classification at their work location for the purposes of layoff and recall and, for seasonal employees in the Department of Education, for the purpose of scheduling summer work. Not more than two (2) employees at any one work location or Agency shall be accorded such seniority status at any one time. Under no circumstances shall such Local Union representative be entitled to layoff protection until after such designation has been forwarded in writing to the Appointing Authority by the Local President. In no case shall a change in such designation occur after layoff notices have been sent if such change would affect layoff or bumping.
5. No employee with Civil Service status in any classification shall be laid off from the affected classification until all employees without status in any classification who are employed in the affected classification are laid off.
6. It shall be the policy and practice of the Employer to recall laid-off full time employees to less-than-full-time positions if such employees are willing to accept less-than-full-time work before hiring any less-than-full-time employees. The Employer shall not use two or more less-than-full-time employees to fill one full time position formerly held by a laid-off full time employee.
7. When the Employer elects to reduce the work force, employees within the affected classifications may request, in writing, preferential layoff out of line seniority. Said requests shall be granted in seniority order. If granted, the Employer shall not contest the employee's eligibility for unemployment compensation. Nothing in this Section shall be construed to constitute a waiver of such employee's recall rights. The fifteen (15) calendar day notice requirement in Section A above shall be waived for employees requesting preferential layoff. Such employees shall not accrue seniority while on layoff.
8. Employees may continue their health insurance up to three years from date of layoff at their expense. The Employer shall notify all employees on their layoff notice fifteen (15) calendar days prior to layoff that they may, at their expense, continue their health insurance coverage up to a period of three (3) years from date of layoff at the group rate. The Employer shall also notify employees that they may, at their expense, continue their dental, vision, and life insurance coverage up to a period of eighteen months from date of layoff

- at the group rate. Employees who are not eligible for Severance Pay in accordance with Article 22, Section Q may elect in writing to pre-pay their share of premiums for health, dental, and/or vision insurance for two (2) additional pay periods after layoff by having such premiums deducted from their last pay check. The Employer shall pay the Employer's share of premiums for health, dental, vision, and life insurance for these two (2) pay periods for employees electing this option. Coverage for the above insurances shall then continue for these two (2) pay periods. This four (4) week period shall be included in the three (3) year or eighteen month period.
9. If a dismissed employee or improperly laid-off employee is reinstated by an arbitrator with full back pay and benefits and if such employee would have been laid off during the period of separation; such employee shall be reinstated only up to the date he/she would have been laid off and the fifteen (15) day notification period shall be waived for this purpose.
  10. If an employee has been laid off improperly and the Employer corrects the error, such employee shall be made whole only up to the date he/she would have been laid off if no error had been made.

#### **Section D. Reassignment of Staff Due to Layoff**

The following procedure for reassignment of staff shall be utilized if layoffs result in an imbalance of staff or in the event that the Appointing Authority elects to close (either permanently or temporarily due to renovation or emergency) a building, cottage, wing, ward or dorm or both.

For purposes of this Section, the following definitions will apply:

1. "Displaced Employee": an active employee who must move from his/her assignment location because of a staffing imbalance resulting from layoff or because of a closure or both.
2. "Vacancy": any position which the Employer seeks to fill. Original vacancies which were posted prior to the notice requirements indicated below shall not be considered vacancies for this purpose.

The following procedure shall be followed in the order indicated:

1. All employees in the assignment location from which employees will be displaced shall be provided written notice ten (10) calendar days prior to the date of the move. This written notice shall indicate available assignment locations. Employees shall only be offered positions which are on the same shift on which they are working at the time of notice. Within four (4) calendar

days of receipt of the notice, employee(s) must indicate in writing their rank order of preference for some of the available assignment locations.

2. The Appointing Authority shall grant such requests in seniority preference order to qualified employees.
3. For employees who are not senior enough to receive one of their preferences and for whom movement across shift lines would be required, the following procedure will be used:
  - a. These displaced employees will be ranked in seniority order by shift.
  - b. An equivalent number of least senior employees by shift (on the same shift) will be identified.
  - c. The displaced employees will then be permitted to "bump" the least senior employees on their shift. Such employees must designate their preference regarding which position they wish to bump within four (4) calendar days after being notified that they may bump on their shift. If they do not indicate a preference, the most senior will go to the most senior, etc. If the displaced employee is also one of the least senior on the shift, such employee cannot "bump".
  - d. Such bumped least senior employees will then be moved into the remaining vacant positions at the Employer's option.

Any reassignment, bumping or transfer in accordance with this Section shall not be considered a schedule change for the purpose of requiring the payment of premium pay.

At the time of written notice to the affected employee(s), the Employer shall announce the closing as either temporary or permanent. If it is temporary, employees who are moved shall be returned to their former assignment locations when it is reopened.

When the Employer intends to phase down or partially close down an area, the employees within the assignment location(s) will be notified in writing regarding the anticipated date of final closing once such date is known. If the date of final closure changes, employees in the assignment location will be notified of such change.

Any position from which an employee is involuntarily reassigned pursuant to this section shall not be filled for a period of six (6) months following the effective date of the reassignment unless such position has first been offered to the involuntarily reassigned employee and such employee has declined the offer.

In the event that there are more positions to be filled than there are displaced employees, the Employer shall select which vacancies need to be filled first and use only the number of positions equal to the number of displaced employees. Any positions remaining vacant after the application of this section shall be considered original vacancies and filled in accordance with Article 14, Section C.

### **Section E. Bumping.**

The employee scheduled for layoff may elect to either accept layoff or bump to the least senior position in a former classification in his/her Agency or work location (or Department, in the Department of Natural Resources, unless a secondary agreement is in effect) as provided in this Section. An employee scheduled for layoff who fails or is unable, in accordance with Section C.3., to exercise the option to bump to the least senior position in a former classification shall be laid off.

For purposes of this Article, the least senior position is defined as:

1. A vacant position which the Employer intends to fill; or
2. The position occupied by the least senior employee as defined in Article 12 above.

Within seven (7) calendar days of receipt of notification of layoff, the employee scheduled for layoff shall notify the Employer of his/her decision to either accept layoff or bump into the least senior position at the work location or Agency in a former classification series at and below any level at which the employee had satisfactorily completed the required probationary period.

An employee seeking to bump into another position must meet all requirements in accordance with Section C.3. In the Department of Corrections, any proposed variations in the procedures provided in this Article will be subject to secondary negotiations.

As a result of bumping downward, an employee shall not earn more than the maximum rate of the lower class bumped into or more than the rate previously earned in a higher class from which the employee bumped. When an employee bumps downward he/she shall be paid at that step in the lower level pay range which credits the service in the higher level range(s) to the step at which the employee was paid when promoted from a lower level.

## **Section F. Exercise of Rights under this Article**

Employees shall exercise bumping or reassignment rights under the provisions of this Article only as indicated below:

1. a. Full-timers first replace less senior full-timers.  
b. The least senior full-timers are then given the option of replacing less senior part-timers or of accepting layoff; then of replacing less senior permanent-intermittents or of accepting layoff.
2. a. Part-timers first replace less senior part-timers.  
b. The least senior part-timers are then given the option of replacing less senior permanent-intermittents or of accepting layoff; then of replacing less senior full-timers or of accepting layoff.
3. a. Permanent-intermittents replace less senior permanent-intermittents.  
b. The least senior permanent-intermittents are then given the option of replacing less senior part-timers or of accepting layoff; then of replacing less senior full-timers or of accepting layoff.

The attribute of full-time, part-time, or intermittent accrues to the position, not to the individual. Therefore, if an employee bumps (for example) from a full-time to a part-time position, that employee will work part-time. Part-time and permanent-intermittent employees may only replace full-time employees if they have achieved Civil Service status in the classification.

## **Section G. Recall Lists**

Agency recall lists shall be maintained by seniority for each class and level and employment type in each series for each Agency or work location affected by layoff. Each laid-off employee shall automatically be placed on the Agency recall list for the class and level from which he/she is laid off. An employee who has been laid off from a closing Agency shall have the right to designate one other open Agency as their home Agency and shall be placed on the Agency's recall list.

The Employer shall, when issuing the layoff notice, inform the employee of his/her rights under this Article and Section, and shall provide to the employee at that time the proper form for designating the several recall lists, classifications, work locations, etc., as required below.



Each laid-off employee shall have the right to have his/her name placed on a Departmental Recall list, in order of seniority, for the class and level from which he/she is laid off, for each work location or Agency at which he/she will accept recall to employment.

The employee shall notify the Employer in writing of his/her designation within seven (7) calendar days subsequent to being laid off. Return from a Departmental recall list shall be in order of seniority.

In addition, the laid-off employee shall have the right to have his/her name placed upon the Agency recall list in seniority order, for such additional classes and levels in which he/she has satisfactorily completed a probationary period prior to being laid off. Such employee shall also have the right to have his/her name placed on Departmental lists(s) for such position(s) as provided above. Use of approved class clusters for recall is a proper subject of bargaining at the secondary level.

Employees with ten (10) or more years of seniority, who are currently on layoff or who are laid off during the term of this Agreement, shall have the opportunity to place their names on the Agency recall lists, for the primary class only, in seniority order for Agencies within their Department other than the one from which they were laid off in accordance with this Section. These employees shall continue to have the opportunity to place their names on the Departmental recall list in accordance with this Article. An employee who accepts or refuses recall to employment from such Agency recall list shall have his/her name removed from recall lists in accordance with Section I, (4) below.

An employee may delete in writing a classification or designated work location from any list upon which his/her name appears without penalty at any time prior to the recall notice being sent. An employee who bumps to another class and/or level shall be automatically placed on the Agency recall list for the classification and level from which he/she bumped.

A laid-off employee shall also have the right to have his/her name placed on Statewide recall lists, in seniority order, for any classes and levels in which he/she has satisfactorily completed a probationary period as provided above. Use of approved class clusters for recall is a proper subject of bargaining at the secondary level.

Employees who are laid off and have at least one year of service within the last ten years in a Department other than the one from which the employee was laid off, shall have the option, upon written notice to the Employer which has most

recently laid off the employee, to have their name placed on the Departmental recall list for the Department for which the employee formerly worked.

An employee who has been separated and is able to return to work from disability retirement or Workers' Compensation will be placed on recall lists in proper seniority order upon medical certification of their physical and/or mental ability to return to perform the essential functions of the job. Employees able to return from Long Term Disability under these conditions shall be placed on the Departmental recall list, provided such written request is made within two (2) years of initial receipt of current Long Term Disability benefits. Such certification shall be presented to the Department/Agency Personnel Officer of the affected Department.

Employees must indicate in writing to which classes, work locations, and Departments they are willing to accept recall.

If there is an error in the administration of the system which leads to improper recall, such recall shall be corrected.

#### **Section H. Recall from Layoff.**

The provisions of this Section shall be applied subject to the exceptions listed in Section C.3. of this Article. The Employer will generate a new recall list for each vacancy for the pay period current at the initiation of the hiring process, and provide a copy of such list to the Union. Notice of recall shall be sent to the employee at his/her last known address by registered or certified mail. An employee whose primary agency has closed and then reopened (under the jurisdiction of the same Department) shall have recall rights to that agency in accordance with this Article and Appendix C.

When the Employer intends to fill a vacancy, provisions of Article 14, Assignment and Transfer, shall first be exhausted. Thereafter, the Employer shall recall the most senior employee who is on the Agency recall list for such classification and level to fill the remaining open position.

If no employee is on such Agency recall list, the Employer shall recall the most senior employee from the Departmental recall list for the class and level as provided in Section G of this Article. The only exception shall be when an Agency is closing, in which case an employee who is on the Interagency Transfer List who has more seniority than the senior employee on the Departmental recall list shall be awarded the appointment to the vacancy.

If no employee is on such Departmental recall list, the Employer shall recall the most senior employee from the Statewide recall list for the class and level as

provided in Section G of this Article. If it has been 90 days since the recall list has been generated for the position, before a conditional offer of employment is made to a potential new employee a recall list will be pulled. Once that list is exhausted, the Employer may proceed to make the offer of employment to the outside candidate.

Recall lists shall not be combined with any other registers for the purpose of providing the Employer with candidates for an opening.

The employee's right to recall shall exist for a period of up to five (5) years from the date of layoff unless forfeited in accordance with Article 22, Section Q, Severance Pay.

Employees may extend their recall rights for three (3) additional years by submitting a written request before the expiration of the five (5) year period to the Agency from which they were laid off. Employees laid off from closed Agencies shall submit such request to the Central Departmental Personnel Office. Such employees must also designate at least one open Agency to which they will accept recall.

### **Section I. Removal of Name From Recall Lists**

If an employee fails to respond within ten (10) calendar days from the mailing date of the recall notice, his/her name shall be removed from recall lists. In addition, his/her name shall be removed from recall lists as provided below:

1. An employee who refuses recall to employment in his/her Agency in his/her primary classification shall be removed from all recall lists as a voluntary resignation. An employee's name shall not be removed from the Agency recall lists if the employee refuses recall because such employee is medically disabled or on active military duty.
2. An employee who accepts recall to employment in his/her Agency and his/her primary classification shall be removed from all recall lists for all classifications.
3. An employee who refuses or accepts recall to a secondary classification on the Agency recall list shall be removed from all lists for such secondary classification.
4. An employee who refuses or accepts recall to a primary or secondary classification on a Departmental recall list shall be removed from all list(s) for such classification except at the Agency from which he/she was laid off or a designated home Agency. An employee's name shall not be removed from

the Department recall lists if the employee refuses recall because such employee is medically disabled or on active military duty.

5. An employee who refuses or accepts recall to his/her primary class on a Statewide recall list shall be removed from all Statewide recall lists. An employee who refuses or accepts recall to a secondary class on a Statewide recall list shall be removed from that Statewide secondary recall list.
6. An employee convicted of a felony may be removed from all recall lists for just cause.
7. The parties agree that, while either voluntary or involuntary separation of an employee from employment in State Government serves to eliminate recall rights, an exception will be made as follows. Laid-off Bargaining Unit employees who are hired, not recalled, to a position in State Government and who separate before completing either a required probationary period or the required training shall be retained on all recall lists unless such separation is for cause. Upon repayment of any monies received from the State for sick leave credits, employees' previous sick leave balances shall be restored.

For purposes of this Section, the following definitions shall apply:

1. A Primary classification is the classification from which an employee is originally laid off.
2. A Secondary classification is any classification in which an employee has satisfactorily completed a required probationary period, any lower level classification in that same series, or any approved class cluster properly negotiated at the secondary level.
3. An Agency recall list is a recall list for the designated home Agency or the Agency from which the employee is laid off.
4. A Departmental recall list is a recall list for all Agencies or work locations within the Department from which the employee is laid off.
5. Class refers to class and level.
6. A Statewide recall list is a recall list for all Departments that employ Bargaining Unit employees within the Institutional Unit.

#### **Section J. Temporary Recall (90 calendar days or less)**

In accordance with the provisions of this Article, employees shall designate agreement to be recalled by work location on a temporary basis when laid off.

Temporary recall shall also be on the basis of seniority. An employee who fails to accept temporary recall to a work location previously designated shall be removed from that list. Removal from a temporary list shall not affect the employee's place on a permanent recall list.

#### **Section K. Layoff and Recall Information to Union**

The Appointing Authority agrees to provide to the Local Union copies of current seniority list(s), which will be used to determine the employees who are to be laid off or reassigned in accordance with Section D. of this Article.

The Employer agrees to provide to the Local Union copies of all Agency departmental and state-wide recall lists utilized during the recruitment process, as well as copies of relevant transfer lists and job postings. The Employer will inform the Local Union of any changes in, additions to, or deletions from such list(s).

#### **Section L. Annual Leave**

A laid-off employee who is recalled from the Agency recall list within a period that does not exceed two (2) pay periods shall be given the option of "buying back" annual leave credits up to the balance paid out at the time of layoff. A laid-off employee who is recalled from the Department or Statewide recall list within a period that does not exceed two (2) pay periods shall be given the option of "buying back" annual leave credits up to a maximum of ten (10) workdays. Repayment shall be at the same rate at which the annual leave was paid off.

Employees who are being laid off under this Article shall have the option of freezing all, or any part, of their annual leave upon layoff. These annual leave hours shall be paid unless the employees indicate in writing, prior to the date of layoff, to the Appointing Authority or designee the number of hours to be frozen.

Employees who opt to freeze annual leave shall at any point after sixty (60) days from layoff, but before recall rights expire, receive payment without undue delay for the frozen annual leave by notifying the Appointing Authority or designee in writing of the intent to accept pay for the annual leave. Hours paid off under this Section shall be paid at the employee's last base rate of pay. For purposes of this Section, "layoff" means the termination of active state employment solely as a direct result of a reduction in force.

### **Section M. Transfer for Employees During Layoff Periods**

Employees at Agencies where there are announced layoffs by the Department Director may place their names on recall lists and be recalled in accordance with Sections G and H of this Article, and in accordance with the following procedure:

At the time that employee(s) receive layoff notice an equivalent number of additional employees in the classification may place their names on recall lists. It is understood by the parties that the intent of this language is to provide a one to one opportunity for senior employees to place their names on recall lists in the event of announced layoffs in the Institutional Unit. Therefore when employees have placed their names on recall lists in accordance with this Section, the following procedure will be used:

1. Should the announced layoff(s) take place, then an equivalent number of names of employees, who have placed their names on recall lists in accordance with this section, will be removed from the recall lists, starting with the least senior employee and progressing to the most senior employee on the recall list.
2. Should employee(s) be recalled to another position as a result of placing their name on recall lists, then an equivalent number of employee(s) will be removed from the layoff list, starting with the most senior employee and progressing to the least senior employee on the layoff list.

### **Section N. Transfer for Employees at Closing Agencies**

Employees at Agencies that have been designated for closure by the Departmental Director shall have the same transfer rights as provided in Section H of this Article, and may also place their names on the Statewide recall list in seniority order. Employees working in an Agency who have been laid off from one of the closed Agencies and who wish to transfer to another Agency may also place their names on the Departmental recall list in seniority order for one other Agency.

### **Section O. Right to Interagency Transfer**

At the time that an employee(s) receives their layoff notice at an Agency, an equivalent number of additional employees in the classification at the Agency may put their names on the Interagency Transfer List (Departmental recall list) in seniority order and shall therefore have the same transfer rights as provided in Section H of this Article.